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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

MOVE, INC., a Delaware corporation;
MOVE SALES, INC., a Delaware
corporation; REALSELECT, INC., a
Delaware corporation,

Plaintiffs,

v.

COSTAR GROUP, INC., a Delaware
corporation; JAMES KAMINSKY, an
individual; and DOES 1 through 10,
inclusive,

Defendants.

Case No. 2:24-cv-05607-GW-BFM

JOINT RULE 26(f) REPORT

Judge: The Honorable George H. Wu
Ct. rm: 9D, 9th Floor
Date: October 24, 2024
Time: 8:30 a.m.

FAC filed: August 16, 2024

1 Plaintiffs Move, Inc., Move Sales, Inc., and RealSelect, Inc. (collectively,
2 “Move”), and Defendants CoStar Group, Inc. (“CoStar”) and James Kaminsky
3 hereby submit this Joint Report following the conference of counsel required by Fed.
4 R. Civ. P. 16(b) and 26(f), this Court’s Civil L.R. 26-1, and this Court’s Order
5 Setting Scheduling Conference (ECF No. 100).

6 **RULE 26(f) SUBJECTS**

7 **A. Conference of Counsel**

8 Counsel for the Parties met and conferred telephonically on October 2, 2024,
9 pursuant to FRCP 26(f), LR 26-1, and the Court’s Order Setting Scheduling
10 Conference. This Report is the result of the Parties’ ongoing, good-faith efforts to
11 agree on a proposed discovery plan and case schedule.

12 **B. Jurisdiction and Service**

13 Move has alleged that pursuant to 28 U.S.C. § 1331, this Court has subject
14 matter jurisdiction over this action based on the Defend Trade Secrets Act, 18 U.S.C.
15 § 1836, et seq., and the Computer Fraud and Abuse Act (“CFAA”), 18 U.S.C. §
16 1030, as well as supplemental jurisdiction over the other claims pursuant to 28
17 U.S.C. § 1367. Defendants have not challenged this Court’s jurisdiction. All
18 Defendants have been served.

19 **C. Statement of the Case and Legal Issues**

20 **1. Move’s Statement**

21 Move filed this lawsuit to redress the harm it suffered and is continuing to
22 suffer based on CoStar employee James Kaminsky’s repeated access to Move’s
23 computer systems and the misappropriation of Move’s trade secrets. Move’s
24 original Complaint and First Amended Complaint (“FAC”) allege the core facts.
25 Move operates the online real estate listings service Realtor.com. One of Move’s
26 strategies to drive traffic to its site is creating, curating, and optimizing content for
27 Realtor.com, including the News & Insights section of Realtor.com. Mr. Kaminsky
28 was a content creator for Move for approximately ten years. He is now a content

1 creator for Move's direct competitor CoStar, which operates the online real estate
2 listings service Homes.com. Defendants insist that Mr. Kaminsky's work at CoStar
3 bears no relation to the work he did for a decade at Move, but for purposes of
4 respondeat superior (relevant to the claims here), that is wrong. At both companies,
5 Mr. Kaminsky's job was or is to create content to drive traffic to an online real estate
6 listings site.

7 This case is about Mr. Kaminsky's unauthorized access to Move's documents
8 relating to such content creation, including while Mr. Kaminsky worked for Move's
9 direct competitor CoStar. After Mr. Kaminsky left Move, Move discovered that in
10 his last days of work he sent confidential Move files from his work email to his
11 Gmail account and used his Move credentials to grant that same personal account
12 access to dozens of other files. Mr. Kaminsky then deleted more than 900 files and
13 cleared the browser history from his Move laptop. He then secretly accessed Move's
14 electronic files, acquiring Move's trade secrets, including repeatedly while working
15 for CoStar, his new employer. It was a deliberate, targeted, and surreptitious
16 strategy, not a mere ongoing or incidental access as Defendants suggest. Mr.
17 Kaminsky's personal email account did not have access to the documents in question
18 until his final days of work for Move, when he executed on his secret scheme.

19 Move has alleged with proof—and Mr. Kaminsky has admitted—that he
20 accessed Move's trade secret material while a CoStar employee via Move's secure
21 Google Docs system, constituting violations of each of the statutes asserted in
22 Move's FAC. With that as a starting point, following the preliminary injunction
23 phase, Move is actively pursuing discovery aimed at determining (among other
24 things) what happened to Move's confidential and trade secret files and materials
25 after Mr. Kaminsky wrongfully accessed them. Move propounded several sets of
26 written discovery requests, including, again among other things, a request for the
27 production of forensic images of relevant devices so that Move and its consultants
28 may inspect them. These are the same forensic images that Defendants put directly

1 and concretely at issue in the Declaration of Kevin Negangard filed by CoStar in
2 connection with CoStar's Opposition to Move's Preliminary Injunction Motion
3 (ECF No. 75-5), at paragraphs 6, 7, 10, 11, and 13, and which their own retained
4 experts have already inspected. Defendants' retained expert has already created
5 those forensic images. Move has stated its readiness to engage with Defendants on
6 logistics for the transfer of images, and requested that Defendants expedite the
7 production and transfer, but Defendants have refused that request. Simultaneously,
8 Defendants demand (outside of normal discovery guided by the Federal Rules of
9 Civil Procedure) that Move provide certain metadata for the confidential documents
10 Mr. Kaminsky wrongfully accessed, but Defendants refuse to serve an interrogatory
11 to that effect, or even respond to Move's proposal for a mutual exchange of the
12 images (from Defendants) and the metadata (from Move). Indeed, Move
13 documented its request that the parties conduct discovery pursuant to the Federal
14 Rules, and it also, as noted, proposed an expedited process that would have resulted
15 in a mutual exchange of the forensic images and document metadata. Move objects
16 to Defendants' one-sided discovery (and their effort to create a misleading record)
17 through (a) their refusal to quickly provide Move with the requested forensic images
18 of the relevant devices, and (b) their insistence on using certain metadata (hash
19 values) to unilaterally search for Move's confidential information on CoStar's
20 systems, while also preventing Move's experts from conducting their own forensic
21 review of the evidence.

22 **2. CoStar's Statement**

23 CoStar owns Homes.com, and Move operates Realtor.com, both websites
24 with home listings. Homes.com has surpassed Realtor.com in the marketplace. This
25 case is Move's vain attempt to fight back. It has made a mountain out of a molehill,
26 and waged a PR campaign on the back of false allegations against CoStar.

27 For years Realtor.com was second only to Zillow. But as a result of significant
investment, a superior product, a billion dollar marketing campaign, and a better

1 business model—rather than auction leads to buyer brokers, as Move does,
2 Homes.com uses an advertising model to help listing brokers sell homes—
3 Homes.com has vaulted ahead. In the words of Move’s CEO, Homes.com has
4 become an existential threat to Realtor.com. So when Move noticed that a former
5 employee, Jim Kaminsky—whom Move had let go in January of this year—had
6 maintained access to some unsecure documents on its unsecure platform and had
7 joined Homes.com (in a different role, which he disclosed to Move), Move saw an
8 opportunity to try to use Kaminsky and his actions to tar its surging competitor. It
9 filed a lawsuit, and engaged in a PR campaign, claiming that CoStar had hired
10 Kaminsky to build a news division, and that CoStar was using Move trade secrets to
11 compete against Move. Those claims were baseless. Worse, Move knew that.
12 Kaminsky had told multiple managers at Move that he had been hired to edit and
13 write descriptions of New York condos. And there was no evidence—because none
14 exists—that Kaminsky or CoStar had used any of Move’s documents, much less to
15 build a rival news business.

16 As a result, CoStar sent Move a Rule 11 letter. Move, which had already
17 milked its lawsuit in the press, then abandoned the core of its case and withdrew its
18 allegations regarding CoStar’s plans to use Kaminsky and Move’s trade secrets to
19 build a competitive news division (even though those allegations had been heard
20 throughout the industry), and filed the FAC—this time, basing its claims on an even
21 weaker, and equally baseless, theory. Move’s FAC now alleges CoStar *might* alter
22 its content and search engine optimization (“SEO”) strategy to increase web traffic
23 based on Kaminsky’s access to purported Move trade secrets that he authored, and
24 that he accessed fleetingly thereafter, and, with one immaterial exception, did not
25 retain.

26 From one complaint to the next, Move’s theory of the case has transformed—
27 but the facts have not. What remains true is, among other things, that CoStar did
28 not hire Mr. Kaminsky for a role related to news, but instead to manage a small group

1 focused on writing online descriptions of New York condominiums; Mr. Kaminsky
2 does not have any strategic role or input at CoStar beyond the localized content he
3 and his team are generating regarding New York condos; CoStar has a wholly
4 separate residential real estate data and information team, run by a different editor;
5 CoStar does not possess, and has never possessed, any of the documents Move has
6 claimed allegedly contain trade secrets; and CoStar's management has not requested
7 or sought to use any confidential Move information from Mr. Kaminsky to support
8 or advance CoStar's business.

9 Unlike a genuine trade secret plaintiff that seeks to quickly determine what
10 happened to its documents, Move has sought to avoid the facts. Remarkably, faced
11 with a court order allowing expedited discovery ahead of *Move's own motion* for a
12 preliminary injunction, Move *refused* to take discovery. No wonder. Discovery
13 pursued and evidence affirmatively provided by CoStar and Kaminsky, including a
14 forensic report and a wealth of testimony, have underscored that Move's claims are
15 meritless. CoStar does not have, and certainly has never made use of, the documents
16 Move has claimed allegedly contain trade secrets. Kaminsky had no use for them in
17 his role at CoStar, and in any event did not use them at CoStar. And Move never
18 treated the documents as trade secrets—they were not marked as such, described as
19 such, or secured. To the contrary, they were deliberately left unsecure to foster
20 collaboration with external parties. And that is no surprise, because at their heart the
21 documents concern discussions about celebrity gossip, home buying and lifestyle
22 stories, through August 2024, that are stale and in any event could not be further
23 removed from a secret formula.

24 Move's campaign of fact-avoidance has continued since its preliminary
25 injunction ("PI") motion was denied. During PI discovery, CoStar served forensic
26 expert reports that showed, among other things, that the five documents on which
27 Move focused in its PI motion were not in CoStar's possession and Kaminsky had
28 segregated and never accessed the one document he still had in his possession. To

reach that conclusion, the forensic expert firm, Alvarez & Marsal (“A&M”), searched for such files based on the limited information provided by Move in expedited discovery. After the PI denial, more than two weeks ago, CoStar asked Move for the MD5 hash values for the documents at issue and the rest of the documents that it has claimed are trade secrets. Those values, which could easily be provided by Move, would enable A&M to determine whether any of the remaining supposed trade secret documents are on any of Kaminsky’s personal and CoStar devices, and whether Kaminsky provided any such documents to anyone at CoStar. For reasons that have become plain, Move has stalled, and failed to provide the hash values to enable to further searches to take place. In the parties’ meet-and-confer exchanges, Move has offered various excuses for its delay, but none holds water. For example, Move has stated that it will not facilitate a search for its supposed trade secrets because CoStar has not agreed to permit Move to trawl through entirely unrelated files on devices owned by CoStar and Kaminsky. Put aside the fact that Move’s fishing expedition request is unjustified—even if that were not true, why does Move’s desire to engage in that detour justify, or even explain, a refusal to cooperate in a search for Move documents on CoStar’s and Kaminsky’s devices? It bears repeating: At every step of the dispute, Move has tried to *avoid* learning what happened to its purported trade secrets—it sat on its hands and did not contact Kaminsky prior to suit; it declined to take discovery at the outset of the case; and now it is erecting barriers to hinder an expanded search for its own documents. Move’s tactics speak volumes about its (lack of) belief in the merits of its own case.

Move cannot escape the truth indefinitely. CoStar intends to pursue discovery from Move, including by way of formal requests to obtain the hash values that Move is refusing to disclose, in order to demonstrate that Move has no factual basis—nor did it ever—to support its claims against CoStar. CoStar will also respond to the reasonable discovery served by Move consistent with the applicable rules.

3. Mr. Kaminsky’s Statement

1 Kaminsky was a news editor at Move's Realtor.com whose position was
2 eliminated in a surprise mass layoff off in January 2024. Kaminsky, who had no
3 plans to seek another job before his retirement, was blindsided by the layoff, and, in
4 the 48 hours that he had left before he was forced to leave Move's offices, granted
5 himself access at his personal Gmail account (Jim.Kaminsky@gmail.com) to
6 documents which he believed would help him describe his accomplishments for his
7 future job search. Despite Kaminsky's loyal service to Move for almost a decade,
8 no one at Move ever bothered to contact Kaminsky about his access to the
9 documents. Instead, Move developed a press strategy and initiated litigation to try
10 to drag down its competitor (and Kaminsky's new employer), CoStar. Kaminsky is
11 merely a pawn in Move's play against its fierce competitor. Move's false and
12 reckless allegations against Kaminsky, which have dragged his name through the
13 mud, are shameful.

14 To be clear—and as Kaminsky has already declared under oath—Kaminsky
15 has never, and will never, share any of Move's supposed trade secret documents with
16 anyone. He did not use those documents in any way for his new job at CoStar, which
17 is entirely different from the job he had at Move (and from which he is in any event
18 on leave). Indeed, Move cut off Kaminsky's access to the documents months ago
19 so he does not even have access to them, absent one (regarding employee salaries
20 that Kaminsky himself set) that his counsel advised him to preserve for purposes of
21 the litigation, but that Kaminsky has not accessed for months. Kaminsky has not,
22 and will never, use any of the Move documents at CoStar. He is also contractually
23 obligated with Move and CoStar not to use any of Move's confidential information
24 in the course of his new job. In other words, Move was never harmed by Kaminsky's
25 access to the documents, and it never will be. Moreover, the information contained
26 in the documents is stale, widely disseminated at Move, inadequately protected, and
27 of little, if any, relevance outside of Move, as more fully described in Mr.
28 Kaminsky's extensive declarations filed in this action.

1 Move claims that Kaminsky “surreptitiously” and “repeatedly” accessed the
2 documents while in the course of his new job at CoStar, but that is false and belied
3 by the evidence. First, Kaminsky has an entirely different job at CoStar than he had
4 at Move, so the Move documents are entirely irrelevant to his new work at CoStar
5 writing and editing descriptions of high-end condominium buildings. Second,
6 Kaminsky did not view any of the documents Move contends are trade secrets for
7 his first nearly three months at Move. He viewed the most of the documents at issue
8 briefly in May 2024 from his home computer, in his home office, as he was digging
9 through old emails to resolve a tax withholding issue. If he had been intent on spying
10 on Move for his new job at CoStar, he would not have waited nearly three months
11 after starting the new job to access the documents when his access could have been
12 terminated at any time by Move. Moreover, Kaminsky did not secretly access the
13 documents; he did so by adding permissions for a personal email address that
14 includes his name (Jim.Kaminsky@gmail.com), as Kaminsky had seen other
15 employees do in the course of his years of employment at Move. Kaminsky contends
16 that Move has suffered no injury from his brief access.

17 Finally, it is telling that Move has been unable to identify any manner in which
18 it has been harmed by Kaminsky’s limited access to the documents months ago. In
19 declining the opportunity to take expedited discovery prior to the hearing on Move’s
20 preliminary injunction motion, the only possible inference is that Move knows
21 Kaminsky did not use or disclose any of the alleged trade secrets and does not want
22 to address that inconvenient truth.

23 **D. Procedural History**

24 Move filed its original complaint against Defendants on July 2, 2024, and it
25 filed its FAC on August 16, 2024. Move also requested a preliminary injunction,
26 which the Court denied without prejudice on September 23, 2024. CoStar has filed
27 a Motion to Dismiss Move’s CFAA and California Comprehensive Computer Data
28 Access and Fraud Act (“CDAFA,” Cal. Penal Code § 502) claims, set for hearing on

1 October 28, 2024, which Mr. Kaminsky joined. The Motion is fully briefed as of
2 the date of the Parties submitting this joint statement.

3 **E. Parties and Non-Party Witnesses.**

4 Plaintiffs are Move, Inc., Move Sales, Inc., and RealSelect, Inc (collectively,
5 “Move”). Move is not aware of significant non-party percipient witnesses at this
6 time, although such witnesses might be identified in discovery.

7 Defendants are CoStar Group, Inc. (“CoStar”) and James Kaminsky.

8 **DISCOVERY PLAN**

9 **F. Initial Disclosures**

10 Pursuant to FRCP 26(f)(3)(A), the Parties have conferred regarding the timing
11 of Initial Disclosures under FRCP 26(a) and have agreed to serve their respective
12 Initial Disclosures on or before October 23, 2024.

13 **G. ESI**

14 Pursuant to FRCP 26(F)(3), the Parties have discussed disclosure and
15 discovery of electronically stored information and have agreed to work together to
16 develop an efficient plan for the exchange of electronically stored information.

17 **H. Privilege Issues**

18 Pursuant to FRCP 26(f)(3)(D), the Parties have conferred and, pending further
19 discovery, do not at this time anticipate significant privilege issues. The Parties
20 reserve and do not waive any objections or other challenges to assertions of privilege
21 or protection that are asserted in the future.

22 **I. Limitations on Discovery**

23 Pursuant to FRCP 26(f)(3)(E), the Parties have conferred on the discovery
24 provided for in the Federal Rules. Defendants request (and the parties have agreed)
25 that their expedited discovery requests not count toward applicable discovery limits,
26 including the limits on interrogatories in FRCP 33(a)(1). Defendants will re-serve
27 their expedited discovery requests on a non-expedited basis as part of ordinary
28 merits-based discovery, modified to cover all of the alleged trade secrets instead of

1 just those at issue in Move's motion for a preliminary injunction. Move reserves the
2 right to object to depositions and deposition testimony that are cumulative of the
3 depositions Defendants have already taken in this action. To the extent that the
4 Parties agree that any depositions will likely need to exceed the time limit set by
5 FRCP 30(d), the Parties will make an application to the Court on a deposition-by-
6 deposition basis. At this time, the Parties do not believe non-expert discovery should
7 be conducted in phases.

8 **J. Protective Order**

9 The Parties have a Confidentiality Protective Order in place, issued by
10 Magistrate Judge Mircheff (ECF No. 40).

11 **K. Discovery Plan and Expert Disclosures**

12 Pursuant to FRCP 26(f)(2)-(3), the Parties have conferred regarding a
13 discovery plan, including a discovery cutoff date and the timing of expert witness
14 disclosures. Their proposals are provided below.

15 **ADDITIONAL MATTERS ADDRESSED PURSUANT TO LOCAL RULES**

16 **L. Complex Litigation Manual**

17 Pursuant to L.R. 26-1(a), the Parties have conferred and agree that this case
18 should not be designated as complex, and that the procedures of the Manual for
19 Complex Litigation should not be utilized.

20 **M. Dispositive Motions**

21 Pursuant to L.R. 26-1(b), the Parties have discussed the filing of dispositive
22 motions. All parties anticipate filing a motion for summary judgment as to some or
23 all of the claims raised in the Complaint at an appropriate time, after discovery has
24 progressed. Defendants have filed a motion to dismiss Move's CFAA and CDAFA
25 claims under Federal Rule of Civil Procedure 12(b)(6), and have noticed a hearing
26 on this motion for October 28, 2024. Dkt. Nos. 96, 97.

27 **N. ADR Procedures**

28 Pursuant to L.R. 26-1(c), the Parties have discussed the ADR Procedure

1 specified in L.R. 16-15.4. The Parties are amenable to ADR Procedure No. 3, a
2 private dispute resolution proceeding with a mediator jointly selected by the Parties.

3 **O. Trial Estimates and Trial Counsel**

4 Pursuant to 26-1(d), the Parties estimate that trial of this case will require five
5 to seven court days. Move's lead trial counsel will be Brent Caslin, David R. Singer
6 and Todd C. Toral of Jenner & Block LLP. CoStar's lead trial counsel will be
7 Nicholas J. Boyle and Matthew W. Walch of Latham & Watkins LLP. Mr.
8 Kaminsky's lead trial counsel will be Ethan J. Brown of Brown Neri Smith Khan
9 LLP.

10 **P. Additional Parties**

11 Pursuant to L.R. 26-1(e), the Parties have conferred regarding the need to
12 name additional parties. No Party currently identifies any necessary party to be
13 added. Move reserves its right to substitute its Doe Defendants with the names of
14 additional parties, if identified in discovery.

15 **Q. Independent Examiner or Master**

16 Pursuant to this Court's Order Setting Scheduling Conference, the Parties
17 have conferred and do not believe that the appointment of a special examiner or
18 master is necessary for this case.

19 **R. Magistrate Judge**

20 The Parties do not mutually consent to have a Magistrate Judge preside over
21 the entire action under 28 U.S.C. § 636.

22 **S. Damages and Insurance Coverage**

23 Move does not have an estimate of its actual damages or recoverable statutory
24 damages at this time, and will seek material informing damages in discovery.

25 **T. Discovery and Pretrial Schedule**

26 Pursuant to LR 26-1(f) and this Court's Order Setting Scheduling Conference,
27 the Parties have conferred on the timing of discovery, expert disclosures, and trial.

28 The parties propose to the Court the pretrial schedule set forth below:

Last day to add parties: June 9, 2025
Fact discovery cutoff: June 16, 2025
Initial expert disclosures: September 8, 2025
(Where party bears burden
of proof on issue)
Rebuttal expert disclosures: October 6, 2025
(Where party bears burden
of proof on issue)
Expert discovery cutoff: October 27, 2025
ADR completion date: November 3, 2025
Dispositive motion (MSJ) cutoff: December 15, 2025
Dispositive motion hearing cutoff: January 26, 2026
Final Pre-Trial Conference: March 2, 2026
Trial: March 23, 2026

Dated: October 21, 2024

JENNER & BLOCK LLP

By: /s/ Todd C. Toral

Brent Caslin
David R. Singer
Todd C. Toral
Carolyn Small
Elizabeth Baldrige

Attorneys for Plaintiffs

1 Dated: October 21, 2024

LATHAM & WATKINS LLP

2
3 By: /s/ Nicholas J. Boyle

4 Nicholas J. Boyle

5 Matthew W. Walch

6 Joseph D. Axelrad

7 *Attorneys for Defendant*

8 *CoStar Group, Inc.*

9 Dated: October 21, 2024

BROWN NERI SMITH KHAN LLP

10
11 By: /s/ Ethan J. Brown

12 Ethan J. Brown

13 Patricia A. E. Tenenbaum

14 *Attorneys for Defendant*

15 *James Kaminsky*

1 ATTESTATION UNDER LOCAL RULE 5-4.3.4

2 I, Todd C. Toral, am the ECF User whose ID and password are being used to
3 file this Joint Rule 26(f) Report. In compliance with Local Rules 5-4.3.4(a)(2), I
4 hereby attest that Nicholas J. Boyle and Ethan J. Brown have concurred with this
5 filing.

6
7 Dated: October 21, 2024

/s/ Todd C. Toral

Todd C. Toral